upa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2247 OF 2006
IN
SUIT NO.2199 OF 1988

Smt.Luiza D.D'Souza and others).. Plaintiffs

Versus

Anant G.Vaishampayan and others).. Defendants

Mr.N.V. Moye for the Plaintiffs.

Mr.P.G. Lad for Defendant No.3.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 2ND AUGUST 2006

P.C.:

. The present Motion has been taken out by Defendant No.3 for setting aside the order dated 22nd June 2006 passed by this Court directing the Suit be proceeded with ex-parte. Defendant No.3 has also sought permission to file their Written Statement.

2. According to Defendant No.3, its Advocate did not file the Written Statement in spite of instructions to do so. The Written Statement was then prepared in the year 2003 after they had engaged the present Advocate. A copy of the Written Statement was also sent to the Plaintiffs in 2003. In such circumstances, it is prayed that Defendant No.3 be permitted to contest the Suit and the Written Statement be taken on record.

3. Heard Advocates.

4. Defendant No.3 Society has made out a case for taking the Written Statement on record. It has explained the delay in the affidavit in support of the Motion. However, in view of the inordinate delay on the part of Defendant No.3, it must pay costs to the Plaintiffs.

5. Hence, Notice of Motion allowed. The order dated 22nd June 2006 directing the Suit to proceed ex-parte against Defendant No.3 is set aside.

6. The Written Statement of Defendant No.3 to be taken on record subject to payment of costs of Rs.10,000/- (Rupees Ten Thousands only) to the Plaintiffs within two weeks from today.

7. In view of the Written Statement being taken on record, liberty granted to the Plaintiffs to amend the affidavit of documents and file a further affidavit by way of examination in chief, if necessary.

8. Notice of Motion disposed off accordingly.